

DAWLEY CREEK RANCH  
AND L. FRANKLIN MADER

IBLA 78-477

Decided September 18, 1978

Appeal from decision of Administrative Law Judge Mesch dismissing appeals from Bureau of Land Management (BLM) grazing use determination Nevada 1-78-1.

Appeal dismissed.

1. Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Service on Adverse Party

When appellant has failed to serve a copy of the notice of appeal and statement of reasons on the adverse party named in the decision appealed from, in the manner prescribed in 43 CFR 4.401(c), and the adverse party moves for summary dismissal under 43 CFR 4.413(b), the appeal is properly dismissed where appellant has not responded to the motion for dismissal or acknowledged the procedural deficiency.

APPEARANCES: Cliff Gardner, President, Dawley Creek Ranch, pro se;  
Burton J. Stanley, Esq., Office of the Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On July 10, 1978, the Bureau of Land Management (BLM) filed a motion with this Board to dismiss the appeal of Dawley Creek Ranch and L. Franklin Mader from a decision of May 12, 1978, rendered by Administrative Law Judge Robert W. Mesch, after a hearing was held in Elko, Nevada, March 16, 1978. The Judge dismissed their appeals affirming the BLM's Elko District Manager's determination as to the extent of grazing use for the Harrison and the Ruby No. 9 allotments.

The Judge's decision specifically directed in the appeal information section that the appeal must be in strict compliance with the regulations in 43 CFR Part 4 and enclosed a copy of those appeal procedures. He specifically identified BLM as the adverse party to be served, and he also emphasized that if an appeal were taken, the adverse party (BLM could be served at the Office of the Regional Solicitor, Sacramento, California, and he provided the correct address.

The record shows that on June 15, 1978, appellant Dawley Creek Ranch filed a timely notice of appeal with a statement of reasons with Judge Mesch. However, when the notice was not served on the adverse party, Judge Mesch sent a copy of the June 15 filing from Dawley Creek Ranch together with the enclosures mentioned therein to the Regional Solicitor's Office, Sacramento, California.

BLM moves to dismiss this appeal on the grounds that the notice of appeal was not served upon the United States within the time required (43 CFR 4.402(b)). BLM contends that appellants are required to serve the United States with a copy of the notice of appeal and any statements of reasons, etc., not later than fifteen (15) days after the document has been filed (43 CFR 4.413).

[1] As correctly indicated by BLM, service of appeal documents on adverse parties is governed by 43 CFR 4.413(b) which provides:

Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 4.401(c), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 4.402. Proof of such service as required by § 4.401(c) must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203), within 15 days after service unless filed with the notice of appeal.

To date the required service of the appeal documents on the adverse party has not been accomplished by appellants. Moreover they have not responded to the BLM motion before this Board to acknowledge or explain this basic procedural deficiency. Proof of service of this motion on appellants has been filed by BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

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Edward W. Stuebing  
Administrative Judge

We concur.

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James L. Burski  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

